STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
MARGARET BOREN,	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 2000SF0020
	)	EEOC NO: 21B992580
STATE OF ILLINOIS DEPT OF PUBLIC AID,	)	ALS NO: S-11728
	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Mt. Vernon, Illinois on December 9 and 10, 2003. Moreover, an evidence deposition of one of the witnesses took place on December 30, 2003. The parties subsequently filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

Contentions of the Parties

In her Complaint, Complainant asserts that she was the victim of sex discrimination when Respondent ultimately suspended her for five days for violating various work-related rules. Respondent, however, submits that Complainant was suspended for reasons unrelated to her gender.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On October 3, 1994, Complainant, a female, was hired into an Executive I position. On November 16, 1996, Complainant was promoted to Regional Office Manager in Respondent's Marion Regional Office. At all times pertinent to this case, Respondent's Marion Office was a part of Respondent's Division of Child Support Enforcement.

2. At all times pertinent to this case, Complainant, as Regional Manager, was responsible for the day-to-day operations of the Marion Office, which included the supervision of Charles Daugherty, a male Assistant Regional Manager, as well as approximately 25 to 30 other employees. Approximately two thirds of Respondent's 2,500 employees were women, and all but three of the Marion Office's 25 to 30 employees were women.

3. At all times pertinent to this case, John Rogers, a male, was Respondent's Deputy Administrator and served as Complainant's supervisor. In his capacity as Deputy Administrator, Rogers had an office in Belleville, Illinois, and made periodic visits to the Marion Office.

4. At all times pertinent to this case, Respondent had in force a sexual harassment policy that made each supervisor responsible for maintaining a workplace free from sexual harassment. The policy also set forth a procedure for reporting sexual harassment that provided for the alleged victim to contact a supervisor to register a complaint. It further stated that complaints of sexual harassment could be made directly with Respondent's Bureau of Internal Affairs.

5. On December 7, 1998, Daugherty sent an e-mail to Derrick Moscardelli, Chief of Respondent's Bureau of Internal Affairs, indicating that Pam Pinkerton, a female employee in the Marion Office, had complained to him that Clint Bishop, a male employee assigned to the Marion Office to service and maintain computer equipment, had made inappropriate advances to her and to other female co-workers in the Marion Office. Pinkerton approached Daugherty with her complaint because Complainant was not in the office at that time.

6. On December 10, 1998, Pinkerton told Complainant about her allegations against Bishop. At that time, Complainant directed Pinkerton to repeat her allegations to Joan Walters, Respondent's Director, Robert Lyons, Respondent's Director of Child Support Division, and Rogers, all of whom were in the Marion Office that day for a previously

scheduled trip. After Pinkerton repeated her allegations against Bishop, Walters directed that the matter be investigated.

7. On December 14, 1998, Laura Whetstone, an investigator in Respondent's Bureau of Internal Affairs, began her investigation of Pinkerton's complaint. During her investigation, Whetstone spoke to Cynthia Strobel, a female worker in the Marion Office, who indicated that Bishop had made crude sexual remarks on a regular basis from December 1996 to September, 1998 and had attempted to touch her physically on two to four occasions. Strobel also asserted that she had learned from Anna Reynolds, another female employee at the Marion Office, that she had performed oral sex on Bishop in Bishop's office.

8. During her investigation of Bishop, Whetstone also obtained a statement from Vicki Hubbard, a female worker in the Marion office, accusing Bishop of showing her and another female co-worker computer pictures of people and animals having sex. Pam Treat, a female co-worker at the Marion Office and Bishop's sister-in-law, told Whetstone that the Marion Office had been in "total chaos" for approximately four years.

9. Beginning on December 15, 1998, Whetstone obtained a series of statements from Pinkerton who asserted among other things that: (1) Bishop requested that she sleep with him on approximately 25 occasions; (2) Bishop came to her office to talk about non-work related topics; (3) Bishop touched her breast, sat on her lap, and placed his hands between her legs; and (4) Bishop pulled the skirt of Melissa Brown, another female worker in the Marion Office.

10. On December 31, 1998, Complainant gave a statement to Whetstone claiming that: (1) she first became aware of Bishop's harassment of Pinkerton at the December 10, 1998 meeting; (2) she had been aware that Bishop had been bothering Cynthia Strobel in the fall of 1998; (3) she learned of Bishop expressing a desire to meet Strobel in the parking lot with a "ski mask" and had counseled Bishop about the remark after informing Rogers about the incident; and (4) prior to learning of Pinkerton's accusations, she never witnessed Bishop's

actions to be anything but teasing. Whetstone additionally obtained the statements of Anna Reynolds, who confirmed the existence of a sexual relationship with Bishop, and Melissa Brown, who accused Bishop of making several unwanted physical touchings.

11. Beginning on January 11, 1999, Whetstone and another investigator obtained several statements from Bishop who generally denied participating in the sexual conduct attributed to him, although he admitted to having conversations with sexual overtones with several employees that he considered to be teasing in nature. He further stated that he was the victim of unwanted comments about his body from his female co-workers and contended that the Marion Office had a "no holds bar" atmosphere where several employees, including Complainant, would discuss sexual topics openly. In other statements, Bishop asserted that: (1) he spoke to his Springfield supervisor Anne Bourlard about Marion Office employees making the sexual comments to him; (2) in 1997 he received as a birthday gift a Barbie doll, Midols and condoms from Complainant which he found to be embarrassing; and (3) any conversations concerning sex in the Marion Office were toned down in Daugherty's presence.

12. In January of 1999, Bourlard submitted a statement confirming that Bishop had complained to her in sometime between July and September of 1998 about the "cat-calls" and whistling he was receiving from his female co-workers about his physical appearance. Bourlard also asserted that: (1) she took no action on Bishop's information since he did not want to file a sexual harassment complaint; (2) she subsequently met Bishop and Complainant on November 5, 1998 at the Marion Office, when neither person reported any problems to her and Complainant seemed very complimentary of Bishop; and (3) the Marion Office was a "cesspool" as others had described it.

13. On February 5, 1999, Whetstone delivered her investigation report on Bishop for review by Moscardelli and others in the Bureau of Investigation. The report indicated that, based on statements made by certain individuals, the Bureau would be opening a second investigation into Complainant's perceived lack of institutional control over the conduct of her

subordinates at the Marion Office. Moscardelli thereafter assigned the matter to Chris Valentine, another investigator at the Bureau.

14. On February 23, 1999, Valentine interviewed Julia Rodriguez, a female employee at the Marion Office. In her statement, Rodriguez asserted that Complainant's predecessor ran the office professionally, but that the office was run unprofessionally under Complainant.

15. On February 23, 1999, Valentine took the statement of Daugherty who indicated that: (1) on one occasion Bishop hid his laptop computer from Daugherty's view; and (2) no one at the Marion Office had come to him with complaints of mistreatment of a sexual nature, except Strobel who stated that she did not want to work alone at the office.

16. On February 24, 1999, Vicki Hubbard gave Valentine a written statement indicating that she: (1) belonged to a group of seven co-workers who joked among themselves about sexual innuendos; (2) had a sexually related doll sitting on her desk that she planned on taking home; (3) had seen Complainant's Barbie doll gift to Bishop that contained a pack of condoms; (4) never witnessed Complainant telling anyone not to make sexually related comments or jokes when they were made in Complainant's presence; and (5) was not offended by any of the sexually related comments or jokes.

17. On February 24, 1999, Treat gave a written statement indicating that: (1) she was aware of sexual comments in the workplace, but that she was not bothered by them; (2) she and her co-workers joked about anal sex at work; and (3) she recalled Bishop receiving a Barbie doll gift from Complainant that included condoms.

18. On February 24, 1999, Angie Harner, a female employee at the Marion Office, gave a written statement indicating that she was present among several employees when Complainant gave Bishop a Barbie doll gift that included condoms.

19. On February 25, 1999, Judi Hubbard, a female employee at the Marion Office, gave a written statement indicating that: (1) certain off-color and sexual jokes made by

employees at the Marion Office could be heard by clients in the waiting room; (2) Bishop discussed his sex life with her; (3) she saw Bishop giving Reynolds a piggy-back ride down a Marion Office hallway; and (4) she heard rumors of Bishop receiving a sexually oriented gift on his birthday.

20. On February 25, 1999, Linda Stayton, a female employee at the Marion office gave a written statement indicating that: (1) she was not offended by any jokes or innuendos told by her co-workers; (2) Strobel repeatedly told Bishop to leave her alone; and (3) she reported to Complainant a conversation she had with Strobel in October of 1998 concerning a statement made by Bishop in which Bishop told Strobel that he was going to wait for Strobel in the parking lot with a ski mask on to scare her when she left the office.

21. On February 25, 1999, Pat Roznowski, a female employee at the Marion Office, gave a written statement indicating that: (1) she was aware of remarks and jokes of a sexual nature made by employees in the Marion office: (2) she saw Bishop give Reynolds a piggy-back ride down a hallway; (3) she had seen cards of naked men in the office; and (4) she had seen a Chippendale poster on Vicki Hubbard's wall that she had been told to take down, but had been subsequently placed back up.

22. On March 15, 1999 Rogers sent an interoffice memorandum to Whetstone indicating that: (1) he first became aware of Bishop's interest in Strobel in September of 1998, when Complainant called him to advise him that Strobel refused Bishop's request to be taken out and that Strobel did not want to work alone in the Marion Office; (2) he instructed Complainant to have a member of management be on the premises whenever Strobel worked overtime; and (3) Complainant never told him about Bishop's ski mask comment.

23. On April 1, 1999, Complainant provided a written statement indicating that: (1) she had a conversation in August of 1997 with Bishop about Bishop having sex with a dog whenever his fiancé does not give him what he wants; (2) during the same conversation Bishop asked her to find him the perfect woman, to which Complainant responded by giving

him the Barbie doll and Midols but without the condoms; (3) the Barbie doll and Midols comprised a "tongue and cheek" birthday gift tendered in response to his request for a perfect woman; (4) she became aware that Bishop's actions towards Strobel had become more intense in the fall of 1998; (5) she informed Rogers of Bishop's ski mask statement; and (6) she should not be held accountable for the conduct of her employees of which she had no knowledge.

24. During her April 1, 1999 interview with Valentine, Complainant stated prior to providing her written statement that: (1) she was tired of all the people in Springfield never doing anything about all of the problems in the Marion Office; and (2) she would have Governor (Ryan) and Jerry Donovan come down to the office "if this shit doesn't stop." Complainant, when advised during the interview that Rogers had denied hearing about the ski mask incident, told Valentine that: "I'll have to start documentation on him too." Complainant, however, did not assert at this time that she had sent an e-mail to Rogers documenting her discussion of the ski mask incident with him.

25. At some point after April 6, 1999, Valentine completed a Report of Investigation regarding his investigation of Complainant's activities. In the report, Valentine concluded that Complainant had neglected her duties in: (1) failing to notify Rogers about Bishop's ski mask comment; (2) failing to promote a professional environment as evidenced by the fact that several employees stated that they heard or told jokes of a sexual nature; and (3) giving Bishop a sexually oriented gift comprising of a Barbie doll, Midols and condoms. The report further indicated that Complainant violated her responsibility for maintaining a workplace free of sexual harassment by failing to act quickly to minimize any potential liability. It also stated that Complainant failed to promote a professional environment by not adequately addressing either Bishop's ski mask comment or his apparent aggressive behavior towards Strobel and by either condoning or participating in the sexual behavior at the Marion Office and by giving Bishop a sexually orientated gift.

26. After receiving and reviewing the Report, Moscardelli agreed with the factual findings made by the investigators and forwarded the matter to Barbara Hensey, Respondent's Manager of the Division of Personnel Management and Labor Relations.

27. On April 7, 1999, Debra Davis, Respondent's Bureau Manager of Labor Relations, brought written charges against Bishop seeking his termination. Bishop ultimately grieved his termination and subsequently agreed to resign in lieu of discharge.

28. On April 29, 1999, Hensey sent Complainant a "Notice of Intent" to suspend her twenty-one days for the reasons specified in the following Charges: (1) giving Bishop a Barbie doll, Midols and condoms; (2) overhearing sexually explicit conversations and inappropriate jokes by her subordinates and failing to attempt to put a stop to said conversations and jokes; (3) failing to notify Rogers of Bishop's ski mask comment; and (4) failing to effectively execute Respondent's sexual harassment policy and maintain a workplace free of sexual harassment.

29. On May 12, 1999, Complainant, through a union representative, provided a written rebuttal to the charges. Specifically, Complainant asserted that: (1) the birthday gift to Bishop did not contain condoms; (2) there was no evidence that she had been aware of sexually explicit jokes or conversations and yet failed to attempt to stop them; (3) she did speak with Rogers about the ski mask incident; and (4) she adequately enforced the sexual harassment policy. Complainant additionally questioned why neither Daugherty nor Rogers was being disciplined because they too had knowledge of Bishop's behavior and maintained that Whetstone had a conflict of interest in this investigation since she had a personal and familiar relationship with Rogers. Complainant did not mention in her rebuttal that she had in fact e-mailed Rogers about the ski-mask incident.

30. On May 25, 1999, Hensey rejected Complainant's claims made in her rebuttal, and Complainant served her suspension from May 30, 1999 to June 20, 1999.

31. On June 24, 1999, Complainant filed a grievance asking that the 21-day suspension be voided. After Respondent denied Complainant's grievance at the first two

levels, it conducted a third-level grievance hearing during which Complainant had an opportunity to present documents in support of her position. However, at the conclusion of the hearing Davis ultimately denied the grievance after concluding that the investigation was conducted properly, that Complainant had given a gift including condoms to Bishop, that Complainant had allowed explicit conversations and jokes to become commonplace at the Marion Office, and that Complainant had failed to establish that discrimination was a factor in her discipline.

32. On December 30, 1999, Central Management Services (CMS), a separate agency, conducted a fourth-level hearing on Complainant's grievance. At the hearing Complainant introduced a document purporting to be an e-mail from her to Rogers informing him that she spoke to Bishop about his ski mask comment. Unlike other e-mails from her co-workers, the introduced e-mail did not contain a date or time stamp.

33. On July 5, 2000, the CMS Personnel Rules Grievance Panel issued a decision, which recommended that Complainant's suspension be rescinded. Specifically, the panel: (1) did not believe that Complainant's gift to Bishop contained condoms; (2) did not believe that Complainant was aware of any sexually explicit conversations taking place in the workplace; (3) believed that Complainant had in fact notified Rogers of Bishop's ski mask comment; and (4) believed that Complainant had attempted to enforce Respondent's sexual harassment policy as she became aware of specific incidents.

34. On July 5, 2000, Michael Schwartz, Director of CMS, made his own findings based on the Panel's recommendation. Specifically, in granting and denying in part Complainant's grievance, Swartz stated that:

> "While I do not feel a twenty-one (21) day suspension is warranted I do feel some lesser discipline should be imposed. Ms. Boren is in a position of authority at the Marion Regional Office and with this position comes the responsibility of maintaining a proper work environment and enforcing all policies and rules. Specifically, the State of Illinois cannot tolerate any form of sexual harassment in the workplace. Based on the testimony, I find that there was evidence of conduct occurring in the Marion Regional Office that was inappropriate. In addition it was not appropriate for supervisory staff to

give a staff member gift items, which were perceived to have sexual implications or overtones. Based on my review of the hearing I find a five (5) day suspension is appropriate…This final decision is binding on all parties."

35. As a result of Schwartz's decision, Complainant was reimbursed for ten workdays that she had served on her original suspension.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Once a respondent articulates a neutral, non-discriminatory reason for the complainant's adverse treatment, the only real question remaining in the case is whether the complainant has shown by a preponderance of the evidence that respondent's articulation is a pretext for sex discrimination.

4. Complainant has failed to prove by a preponderance of the evidence that the reason given by Respondent for its decision to suspend her for five days was a pretext for sex discrimination.

Determination

Complainant has failed to prove by a preponderance of the evidence that Respondent acted on the basis of her sex in violation of section 2-102 of the Human Rights Act (775 ILCS 5/2-102) when it suspended her from her position after finding that she had failed to maintain a proper work environment and had given a sexually oriented gift to a co-worker.

Discussion

This case presents an interesting question as to how much leeway the Commission will grant an employer who bases a disciplinary decision on results of an internal investigation. According to the Complainant, she is the victim of sex discrimination, in part, because the investigation, which led to a finding that she violated various work rules, was not conducted

"fairly and fully and impartially", and because Respondent came to the wrong conclusions with respect to certain allegations made by her co-workers. However, because the Human Rights Act gives employers considerable leeway in making credibility findings arising out of their internal investigations and because, in any event, there were sufficient facts before Respondent to support its conclusion that Complainant had failed in her duty as a Regional Manager to maintain a proper work environment, I find that Complainant has not established evidence of pretext so as to support her sex discrimination claim.

To understand why Complainant loses on her sex discrimination claim, it is necessary to review applicable case law concerning what the Human Rights Act requires in order to establish a claim of sex discrimination. Specifically, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Human Rights Act. (See, for example, **Townsell and Illinois Department of Labor**, 43 Ill. HRC Rep. 198 (1988), and **Foley v. Illinois Human Rights Commission**, 165 Ill.App.3d 594, 519 N.E.2d 129, 116 Ill.Dec. 539 (1988).) Under this approach, a complainant must first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. Then the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for the adverse action taken against the complainant. If the respondent is successful in its articulation, the presumption of unlawful discrimination is no longer present in the case (see **Texas Department of Community Affairs v. Burdine**, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)), and the complainant is required to prove by a preponderance of the evidence that the respondent's articulated non-discriminatory reason is a pretext for unlawful discrimination.

Here, this process is truncated somewhat by Respondent's concession that Complainant established a *prima facie* case of discrimination, and by Respondent's articulation that the reason that Complainant was suspended was because, in her role as a supervisor, she failed to maintain a professional work environment and tendered a sex-based

gift to a co-worker. Inasmuch as Respondent's explanation provides me with a neutral, non-discriminatory reason for its decision to suspend Complainant (and Complainant has not argued that this reason, if believable, would not be sufficient to satisfy Respondent's articulation burden under **Burdine**), the real issue in this case boils down to whether Complainant has satisfied her burden of showing that Respondent's articulation is a mere pretext for discrimination based on her sex. (See, for example, **Clyde and Caterpillar Inc.**, 52 Ill. HRC Rep. 8, 10 (1989).) To that end, a complainant may establish pretext for unlawful discrimination either directly, by offering evidence that a discriminatory reason more likely motivated the employer's actions, or indirectly, by showing that the employer's explanation is not worthy of belief. (See, for example, **Burnham City Hospital v. Human Rights Commission**, 126 Ill.App.3d 999, 467 N.E.2d 635, 81 Ill.Dec 764 (4th Dist. 1984).) Moreover, a complainant may discredit an employer's justification for its actions by demonstrating either that: (1) the proffered reasons had no basis in fact; (2) the proffered reason did not actually motivate the decision; or (3) the proffered reason was insufficient to motivate the decision. See, for example, **Grohs v. Gold Bond Products**, 859 F.2d 1283 (7th Cir. 1988).

At the heart of Complainant's pretext argument is her contention that Respondent did not have a good-faith belief that she committed any workplace infractions because Respondent's investigation was: (1) intentionally misguided in its inception; (2) insufficient in scope; (3) not conducted in good-faith; and (4) targeted towards a female employee. In general, though, Complainant's attack on the perceived short-comings of Respondent's investigation is somewhat misplaced since the courts and the Commission have consistently found that the Human Rights Act does not guarantee that an employee receive a flawless investigation. (See, for example, **Ford and Caterpillar**, ___ Ill. HRC Rep. ___ (1993SF0242, October 28, 1996), and **Lenoir v. Roll Coaster, Inc.**, ___ Ill. HRC Rep. ___ (1993SF0549, November 6, 1998).) Indeed, all that the Human Rights Act demands is that the investigation provide management with a reasonable opportunity for uncovering the truth, regardless of the

ultimate outcome of the investigation, (see, **Schmitt and Adams County Highway Dept.**, ___ Ill. HRC Rep. ___ (1995SF0053, January 13, 1998), and it would seem that Respondent's investigation of Complainant, which involved the taking of numerous statements over a six-week period of time, was calculated to do just that. Thus, the alleged faulty nature of Respondent's investigation has relevance in this case only to the extent that Complainant can show that Respondent investigated male co-workers differently or that Respondent's management did not honestly believe the results of its own investigation.

Thus, with these standards in mind, Complainant initially maintains that Respondent's investigation into her conduct was intentionally misguided from its inception since it was generated in the first instance solely because Bishop leveled questionable accusations against her during a separate investigation into his own conduct. Moreover, as Complainant sees it, Bishop's accusations regarding alleged mistreatment of him should have carried no weight with Respondent because they were made in an effort to deflect blame from his own misconduct. Additionally, Complainant posits that there was no need to initiate an investigation into her conduct because there was no evidence from any co-worker who gave statements during the Bishop investigation that Complainant was aware of sexual misconduct at the Marion Office, and yet did nothing about it.

Complainant, however, misreads the instant record. Specifically, the record shows that co-workers other than Bishop came forward with allegations of individuals telling jokes, giving piggyback rides, talking to others about breast size, and displaying pictures and cards of a sexual nature. These allegations, if true, provide substance to Respondent's belief that something might be seriously wrong with the working environment at the Marion Office, and that Complainant should have been aware of it. Additionally, while Bishop's allegations against Complainant and his co-workers could be viewed as a poor attempt to deflect blame from himself, it is significant that Bishop's supervisor, in calling the Marion office a "cesspool", provided some corroboration as to Bishop's claims that he had been the victim of sexually

offensive treatment towards him by his female co-workers. Moreover, while it may be the case that these co-workers did not explicitly place Complainant in proximity to most of the events as described, I cannot agree with Complainant that Respondent was unreasonable in deciding to ask her co-workers about the substance of Bishop's and others' allegations of misconduct, given the nature and quantity of reports that were generated during the Bishop investigation.

Complainant additionally argues, though, that the investigation was not conducted in good faith, as demonstrated by the fact that: (1) some of the witnesses were not being told about the subject matter of the investigation at the time they were asked to give statements about their work environments; (2) the investigators did not take her statement until the written investigation report was completed; (3) Respondent assigned an investigator (Whetstone) to take the statement of Rogers, who enjoyed a personal relationship with Whetstone; and (4) Respondent did not give Complainant enough time to produce supporting documentation that would have established that some of the co-workers were lying about the birthday gift she gave to Bishop, and that Rogers was lying about the fact that he had not received notice of Bishop's ski mask comment. None of these alleged procedural defects, though, cast doubt on the sincerity of Respondent's belief that Complainant had failed in her duty to maintain a professional work environment.

For example, as Respondent notes, the fact that some people, including Complainant, were not told that Complainant was the target of the investigation or were not shown prior written statements of others, does not mean that the investigation was somehow rigged against Complainant since all of Respondent's employees signed a statement indicating that the statements in their written reports were true and accurate. Thus, any lack of knowledge as to the subject matter of the investigation had no bearing on the veracity of what was being reported to the investigators. Moreover, although the timing of Complainant's statement and the publishing of the investigation report shortly thereafter could have prevented her from providing more documentation, Complainant ignores the fact that she had over a month from

her initial statement on April 1, 1999 to gather any documents she deemed relevant to support her version of the facts prior to submitting her May 12, 1999 response to the investigation report.

True enough, Respondent's use of Whetstone in its investigation of Complainant places a potential complication on the issue of whether Complainant or Rogers was more credible as to when Rogers became aware of Bishop's ski mask comment. However, assuming that Respondent had used poor judgment in assigning Whetstone (whom the record shows had previously house sat for Rogers) to take Roger's statement, said assignment does not particularly advance Complainant's sex discrimination claim since Whetstone was not a decision-maker in this case. Indeed, if Whetstone (and, more important, Moscardelli) had a predisposition to believe Rogers over Complainant in a swearing match as to when Rogers became aware of the ski mask incident, Complainant failed to demonstrate that the motivations behind said predispositions (i.e., Whetstone's prior personal and Moscardelli's prior professional relationship with Rogers) had anything to do with Complainant's gender.

But Complainant insists that she did, in fact, inform Rogers in a timely fashion about the ski mask comment as evidenced by her undated e-mail that she introduced at the third-level grievance hearing and at the instant public hearing. Yet, this argument gets Complainant nowhere in her sex discrimination claim since management need not accept an employee's version of the facts over the version given by a supervisor in order to avoid a discrimination claim. (See, **Fritz and State of Illinois, Department of Corrections**, ___ Ill. HRC Rep. ___ (1987SF0543, October 17, 1995).) In this regard, Complainant's apparent stance is that Respondent's reluctance to accept her version of the facts or to believe her supportive witnesses is evidence of sex discrimination because Respondent chose to believe a male employee who leveled charges against her. However, Complainant's contention would place employers in an untenable position of risking sex discrimination lawsuits regardless of how they determined credibility issues presented by conflicting statements. This is especially true

in the instant case since Respondent was not necessarily required to accept Complainant's undated e-mail at face value where: (1) Complainant failed to produce the document in her May 12, 1999, initial written response to the charges; (2) after learning that Rogers had denied knowledge of the incident, Complainant had previously suggested to an investigator that there was no such e-mail given her statement that she would have "to start" documenting her conversations with Rogers; and (3) Complainant's undated e-mail did not comport with e-mails from co-workers at the Marion Office who had date stamps on their e-mails.

Additionally, while Complainant was able to convince a CMS panel that she was more credible than Rogers, presumably based on the contents of the alleged e-mail, the issue is not so clear-cut as Complainant suggests since other evidence supports a contrary conclusion. For example, although not noted by Respondent, Bishop's supervisor (Bourlard) provided a written statement indicating that Complainant made no mention at a November 5, 1999 meeting of the ski mask incident and was actually complimentary of Bishop even though the meeting took place within approximately a month of when she had learned of the incident. Given Complainant's concession that she had been friends with Bishop, this apparent failure to mention the ski mask incident could be viewed either as Complainant's failure to initially recognize the seriousness of the incident or as further proof that Complainant was attempting to keep it quiet from Rogers and others in Respondent's management.[1] Thus, the notion that different fact-finders could come up with different results based on the same, or as here, differing records cannot mean that Respondent is guilty of sex discrimination merely because it chose not to believe the Complainant.

[1] True enough, Complainant's tendering at the public hearing of other e-mails that she drafted lends some, albeit not conclusive, support to her claim that the disputed e-mail was genuine. However, because there is no indication that Respondent had such samples when making the credibility decision as to whether Complainant had in fact told Rogers about the ski mask incident, Respondent could reasonably have determined that the proffered document was not genuine in view of the evidence before it at the time it rendered its decision. See, **Schmitt**, slip op. at p. 23.

The same result applies to the issue as to whether Complainant included condoms in Bishop's 1997 birthday gift. In this regard, Complainant insists that she did not include the condoms, and that it was unreasonable for Respondent to believe the contrary proposition as proffered by Bishop and other co-workers in view of certain attendance records indicating that some (but not all) of these co-workers were not at the Marion office on the day that the gift was given to Bishop. But so what? According to the fourth-level grievance report, all 16 employees interviewed during the investigation of Complainant had claimed to have either seen or heard of the gift, and Complainant has not precluded the possibility of Bishop having shown his co-workers the contents of the gift at some other time.[2] In summary, Complainant has failed to show how any of the credibility findings made by Respondent with respect to the imposition of her suspension were so unreasonable so as to provide evidence that her gender was the motivation for the decision to suspend her for failing to maintain a professional working environment at the Marion Office.

Complainant's alternative argument that Respondent's failure to similarly discipline either Rogers or Daugherty has more potential traction in this record to the extent that a basis for Respondent's suspension was its conclusion that Complainant failed to maintain proper institutional control over the Marion Office. After-all, according to Complainant, if the Marion Office was as bad as some of the co-workers depicted in their statements, either Daugherty, who worked there on a daily basis, or Rogers, who visited the office approximately one or two times a week, should have noticed the offensive conduct and put a stop to it. However, both Davis and Moscardelli testified that Complainant (as opposed to Daugherty or Rogers) was disciplined because: (1) contrary to her testimony at the public hearing, Complainant actually was the individual accountable for the actions of her subordinates at the Marion office unless she was absent; (2) the investigation revealed that Daugherty actually did forward Pinkerton's

[2] Indeed, the fact that the birthday gift and its alleged contents were widely known throughout the Marion Office conflicts with Complainant's suggestion at the public hearing that the tender

complaint of harassment; (3) the investigation was unclear as to whether Rogers was present at the Marion Office a sufficient amount of time so as to have become aware of the situation; and (4) the investigation did not produce allegations that either Rogers or Daugherty contributed to the harassment atmosphere in the Marion Office in terms of occasionally engaging in sexually explicit banter with subordinates and giving co-workers sexually suggestive gifts.

True enough, Complainant insists that it was "unfair" for Respondent to hold her accountable for the conduct of others of which she was not personally aware. Maybe so, but any perceived "unfairness" of Respondent's policy is neither here nor there in the context of a discrimination claim given Respondent's explanation that its policy provided for a broad obligation on the part of its supervisors to promote a professional environment. In this respect, Complainant loses on her discrimination claim since she was unable to show that Respondent's expectations of its regional managers were not honestly held or, more important, that any male regional manager, who presided over offices that had a series of sexual harassment incidents of which the manager had no personal knowledge, was treated more favorably. Thus, Complainant's claimed ignorance of the sexual harassment going on at the Marion Office does not particularly help her cause since, under the instant record, Complainant presented no evidence to attack Respondent's otherwise honest belief that Complainant, as the individual primarily in charge of the Marion Office, should have taken more steps to have become more aware of what was going on in the office.

Finally, Complainant submits that her suspension is evidence of an anti-female bias on the part of Respondent since Daugherty had been previously found guilty of sexual misconduct and unprofessional conduct and yet received only an oral reprimand. Specifically, Complainant asserts that Daugherty was guilty of requesting a kiss from Linda Slayton, looking down Pam Treat's shirt and up her dress and calling co-worker Carla Curlee "fat". However,

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of the birthday gift was a private matter between herself and Bishop.

these accusations are not truly comparable to the charges against Complainant where: (1) Slayton's charges were investigated and were found to be "unwarranted"; (2) the record is unclear as to whether Respondent's investigation substantiated any of Treat's allegations against Daugherty; and (3) Complainant has not explained how the second-hand report of Daugherty allegedly calling Curlee "fat" was an example of sexual harassment.[3] Moreover, unlike accusations concerning Complainant's occasional contribution to the sexual banter in the office, there was nothing uncovered during the instant investigation of the Marion Office that indicated that Daugherty was a contributor to the sexual misconduct that was the subject of the investigation. If anything, Respondent's investigation revealed that sex-based conduct and conversations were toned down during Daugherty's presence.

Recommendation

Therefore, because I cannot find that Complainant's suspension was a product of Respondent's anti-female bias, it is recommended that the Complaint and the underlying Charge of Margaret A. Boren be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 2nd DAY OF DECEMBER, 2004

[3] Complainant relayed an incident in which she claimed that Daugherty shoved her at the office near the time when she was first appointed the office manager. However, Complainant conceded that the one-time shove, for which Daugherty apologized, was not an example of sexual harassment.